Supreme Court, U.S.
FILED
JUN 8 1993
OFFICE OF THE CLERK

No. 92-1739

In The

Supreme Court of the United States

October Term, 1992

BARBARA J. NORMAN, ET AL.,

Petitioners,

vs.

DOROTHY REED, ET AL.,

Respondents.

Petition For Writ Of Certiorari To The Supreme Court Of Illinois

ANSWER OF RESPONDENTS DOROTHY REED, VALERIE A. SUTTON, PATTON L. FEICHTER, ERVIN S. RICKS, AND DAVID BARRERA IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether there are special or important reasons for reviewing an Illinois Supreme Court decision that was decided strictly upon state statutory interpretation.

2. Whether the failure of the Harold Washington Party to include judicial candidates for the 1990 general election violated the complete slate rule and, therefore, did not meet the requirements of the Illinois Electoral Code.

3. Whether the complete judicial slate rule is a constitutionally-permissible restriction upon ballot access and party formation.

THE LIST OF PARTIES TO THE PROCEEDINGS IN THE ILLINOIS SUPREME COURT

The parties to the proceedings in the Illinois Supreme Court whose judgement is petitioned for review were appellees Dorothy Reed, Valerie Sutton, Patton L. Feichter, Ervin Ricks, and David Barrera and appellants Barbara J. Norman and the Cook County Officers Electoral Board.

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OPINIONS BELOW

The decision of the Cook County Officers Electoral Board was entered on August 29, 1990 and is not officially reported.

On September 20, 1990, the Circuit Court of Cook County, Illinois, reversed the Electoral Board's decision in part, and affirmed it in part. This decision is not reported.

On October 12, 1990, the Illinois Supreme Court affirmed the Circuit Court's decision. This decision is not reported.

On October 26, 1990, the Court granted the petition for writ of certiorari and stayed the decision of the Illinois Supreme Court.

On January 14, 1992, the Court affirmed in part, reversed in part, and remanded in part the decision of the Illinois Supreme Court. The decision is reported as *Norman v. Reed*, 502 U.S. ___, 112 S.Ct. 698 (1992).

On December 4, 1992, the Illinois Supreme Court entered its latest decision. The decision is officially reported as *Reed v. Kusper*, 154 Ill.2d 77 (1992).

OBJECTIONS TO JURISDICTION

There are no proper grounds upon which the jurisdiction of the Court may be invoked because 28 U.S.C. § 1257 is inapplicable in that there is no federal or constitutional issue before the Court and in that the decision under review was decided solely on non-federal and non-constitutional grounds.

ISSUES PRESENTED

Whether there are special or important reasons for reviewing an Illinois Supreme Court decision that was decided strictly upon state statutory interpretation.

Whether the failure of the Harold Washington Party to include judicial candidates for the 1990 general election violated the complete slate rule and, therefore, did not meet the requirements of the Illinois Electoral Code.

Whether the complete judicial slate rule is a constitutionally-permissible restriction upon ballot access and party formation.

STATEMENT OF THE CASE

In 1989, the City of Chicago conducted a special mayoral election to fill the vacancy created by the untimely death of Harold Washington. In the Democratic primary preceding the special election, Alderman Timothy Evans ran against States Attorney Richard M. Daley. Mr. Daley soundly defeated Mr. Evans. Mr. Evans formed a "political party" of one – the Harold Washington Party, named after the beloved and deceased mayor who was a life-long member and adherent of the Democratic Party. Again, Mr. Daley soundly defeated Mr. Evans.

Under well-established Illinois law, Mr. Evans' Harold Washington Party became an established party for purposes of City elections.

After his loss, Mr. Evans returned to his regular Democratic duties, remained an Alderman and Committeeman, and did nothing to organize, promote, or even operate the Party that he established for the sole reason of running in the general mayoral election.

The City-wide Harold Washington Party lie dormant. No caucuses were held. No committeemen were elected. Nothing happened. Nothing – until the Party was again needed as a vehicle for another defeated Democratic candidate.

In 1990, general elections were conducted for the Cook County Board, States Attorney, Clerk, Recorder of Deeds, and eighteen judgeships. In the Democratic primary preceding these elections, R. Eugene Pincham ran against Richard J. Phelan for County Board President. Mr. Phelan soundly defeated Mr. Pincham.

Mr. Pincham, another life-long Democrat, responded by declaring that a Harold Washington Party would now expand itself to run in all County races. Democratic Alderman Evans had no part in this movement. The purported Harold Washington Party submitted a complete slate of County Board candidates, a complete slate of County-wide executive officer candidates, and nominating petitions of about 48,000 signatures from the City of Chicago and about 12,000 signatures from the suburban component of Cook County. No judicial candidates were slated.

The County offices at issue included (a) offices representing the interests of all County residents, (b) offices

representing only the interests of suburban County residents, and (c) offices representing only the interests of City County residents.

Respondents Dorothy Reed, Valerie Sutton, Patten Feighter, Ervin Ricks, and David Barrera are five Cook County residents who objected to the inclusion of Mr. Pincham's Harold Washington Party on the 1990 general election ballot.

Respondents raised various objections, only three of which currently merit discussion.

First, they submitted that Mr. Pincham and his followers were not entitled to use the name of Harold Washington Party because it was an established party and because there was no statutory authorization allowing the Pinchamites to utilize the Party's name. This is the "name" issue.

Second, they contended that the Party slate was invalid because it did not meet the 5% or 25,000 nominating signature requirement from both the City component of Cook County and the suburban component of the County. This is the "signature" issue.

Third, they claimed that the Party's failure to list a full slate of judicial candidates invalidated its entire slate. This is the "judicial slate" issue.

1. The "Name" Issue

The Cook County Electoral Board heard evidence from Democratic Alderman Timothy Evans, who testified that he had no objection to the Pinchamites' use of his

Party's name. The Board ruled that the Pinchamites could call themselves the Harold Washington Party.

The Cook County Circuit Court affirmed.

The Illinois Supreme Court reversed and determined that § 10-5 of the Illinois Election Code barred the Pinchamites from using the same name as a separate party established in the City.

By a 7-1 vote (Justice Thomas not yet having been appointed), the Court reversed and ruled that Alderman Evans' permission satisfied the requirements of § 10-5 and that any other construction of the section would render it unconstitutional.

This decision was final and has resulted in no further action.

2. The "Signature" Issue

The Electoral Board ruled that the failure of Mr. Pincham's Harold Washington Party to obtain 25,000 nominating signatures from the suburban component of Cook County rendered ineligible those County Board candidates from the suburban component.

The Cook County Circuit Court agreed and ruled that the suburban candidates were ineligible, that the Pinchamites did not have a complete slate of candidates required by the Illinois Electoral Code, and that the entire slate was ineligible.

The Illinois Supreme Court affirmed. It ruled that the suburban district petitions lacked insufficient nominating signatures, that the names of the candidates listed and

nominated for the suburban district did not qualify for placement on the ballot, and that a newly-formed County-wide party must submit nominating petitions with 25,000 signatures from the City and with another 25,000 signatures from suburban Cook County.

By a 7-1 vote, the Court affirmed in part and reversed in part. The Court ruled that the Pinchamite Harold Washington Party was ineligible to run candidates for the county positions designated as suburban seats. Because it failed to meet the requirement of 25,000, the Party did not establish itself in the suburbs and was not qualified to appear on the ballot for suburban county representatives.

This decision was final and has resulted in no further action.

3. The "Judicial Slate" Issue

The Electoral Board found that the Pinchamites were not required to field judicial candidates.

The Circuit Court reversed the Electoral Board and determined that the failure to include judicial candidates did not comply with the "complete slate rule" of § 10-2 of the Electoral Code.

The Illinois Supreme Court did not address this issue.

By a 7-1 vote, the Court remanded the case to the Illinois Supreme Court for a determination of "whether, under Illinois law, the Party's omission of judicial candidates doomed the entire slate." 112 S.Ct. at 709. The

Court specifically expressed no opinion about this subject.

With two justices abstaining, the Illinois Supreme Court ruled that the Illinois Electoral Code contains a complete slate requirement, but that the Party's omission of judicial candidates did not doom the entire slate because the Party was not obliged to nominate judicial candidates.

It is to this decision that the instant petition for a writ of certiorari is taken.

ARGUMENT

STANDARD OF REVIEW FOR GRANTING PETITIONS FOR WRITS

Supreme Court Rule 10.1 provides the considerations governing the Court's review on petitions for writs of certiorari. The Rule states that:

> A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered:
>
> (a) When a United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the

> accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.
>
> (b) When a state court of last resort had decided a federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals.
>
> (c) When a state court or a United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court.

The December 4, 1992 decision of the Illinois Supreme Court meets none of these criteria. There are no "special" or "important" reasons for granting the instant petition for review. This case does not concern a United States court of appeals decision or a state court decision about "an important question of federal law" or about any "federal question."

In *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70 (1955), the Court defined Rule 10's "special and important reasons" as

> reach[ing] to a problem beyond the academic or the episodic. This is especially true where the issues involved reach constitutional dimensions, for then there comes into play regard for the Court's duty to avoid decision of constitutional issues unless avoidance becomes evasion.

The issues raised by petitioners in the instant action do not rise to this level of "special and important." Even

assuming, *arguendo*, that they are "special and important," they do not fall within any of Rule 10's listed considerations.

The core of petitioners' argument revolves around the last two paragraphs of the Court's decision in *Norman v. Reed*:

> This case presents one final issue, which we are unable to resolve. Some of Cook County's judges are elected by citizens of the entire county, and others by citizens of the separate districts. In responding to Reed's objection that the HWP had not fielded candidates for any elected judicial offices in Cook County, the Circuit Court held that, under § 10-2, "the exclusion of judicial candidates on the slate was a failure to fulfill the 'complete slate requirement' of the Election Code." The court then overruled the Electoral Board and treated this failure as an alternative ground for invalidating the Party's entire slate.
>
> We decline to consider whether that ruling was constitutional. The Supreme Court of Illinois itself did not address it and therefore did not decide whether, under Illinois law, the Party's omission of judicial candidates doomed the entire slate. We therefore remand the case to that court for its prompt resolution of issue.

In an effort to bring themselves within the purview of Rule 10, petitioners mince the Court's words and declare that "the Illinois Supreme Court disregarded this Court's said remand mandate." Petition at 13. The Pinchamites argue that the Court's opinion should be amended to read that the Illinois Supreme Court must "decide

whether the complete slate rule concerning Illinois judicial candidates is constitutional."

In short, not pleased with their victory in the Court and in the Illinois Supreme Court, the Pinchamites insist upon an entirely unnecessary constitutional decision and contend that the failure of the Illinois Supreme Court to render one creates a federal issue and meets Rule 10. Rule 10 is not so easily satisfied.

The Illinois Supreme Court considered the judicial slate issue to the extent necessary as directed by the Court. The Court did not instruct the Illinois Supreme Court to rule on constitutional grounds. Given its interpretation of the Illinois Electoral Code – that "the Party's omission of judicial candidates [did not] doom[] the entire slate – there was and is no need to address the constitutionality of the judicial slate requirement.

Under these circumstances, Supreme Court Rule 10 has not been met and cannot be met.

THERE IS NO CONSTITUTIONAL CONTROVERSY FOR DECISION

The Illinois Supreme Court at issue was decided solely upon non-constitutional grounds.

The Court's unerring discipline is that it and the lower courts will not pass upon the constitutionality of legislation in a friendly, non-adversary proceeding, declining because to decide such questions "is legitimate only in the last resort, and as a necessity in the determination of real, earnest, and vital controversy between

individuals. . . . " *Ashwander v. Tennessee Valley Authority,* 297 U.S. 288 (1936). See also *Rice v. Sioux City Memorial Park Cemetery, Inc., supra.* "If a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter." Furthermore, "appeals from the highest court of a state challenging its decision of a question under the Federal Constitution are frequently dismissed because the judgment can be sustained on an independent state ground." *Berea College v. Kentucky,* 211 U.S. 45.

Mr. Pincham wants another United States Supreme Court decision where none is necessary under the state of the law and the law of this case. Mr. Pincham has all the relief that he will ever be entitled to receive. The issues presented for review have been decided and are plainly moot. There are no actual or potential obstacles of any kind to the lawfulness of the Pinchamites' presence on the November 1990 general ballot.

THE HAROLD WASHINGTON PARTY'S FAILURE TO INCLUDE A COMPLETE JUDICIAL SLATE INVALIDATED ITS ENTIRE SLATE.

If certiorari is granted, the issues properly addressed are whether the failure of the Washington Party to field judicial candidates doomed the Party's entire slate and whether this result is constitutional. Respondents respectfully submit that the answer to both issues is affirmative.

The Harold Washington Party slated no judge candidates. Its failure to slate judges violated a cardinal principle of Illinois' liberal electoral laws and caused the remaining ballot to be invalid.

Section 10-2 of the Illinois Electoral Code addresses the petition requirements for a new or expanding party seeking to establish itself within a particular area. It states that:

> In the case of a petition to form a new political party within a political subdivision in which officers are to be elected from districts and at-large, such petition shall consist of separate components for each district from which an officer is to be elected. . . . Each sheet of such petition must contain a complete list of the names of the candidates of the party for all offices to be filled in the political subdivision, but the sheets comprising each component shall also contain the names of those candidates to be elected from the particular district.

The Electoral Code defines a political subdivision as a "unit of local government" and a "district" as " . . . any area which votes as a unit for election of any officer . . . and includes . . . judicial districts, judicial circuits, county board districts." 46 Ill.Rev.Stat. Sec. 1-3 [6][14].

Cook County is a political subdivision. Any party seeking to establish itself in Cook County must satisfy the requirements of §10-2. Accordingly, the Harold Washington Party was required to include in its petition "a complete list of the names of the candidates . . . for all offices to be filled." In the 1990 election, eighteen judgeships

were to be filled. Thirteen were County-wide judge positions; three were city-only judge position; and two were suburban-only judge positions.

Because eighteen judge positions were open for contest in the 1990 election, the Harold Washington Party was required to include candidates for these offices in their petition to appear on the ballot. The failure to include them rendered the petition invalid.

The Pinchamites attempted to avoid the obvious letter and spirit of the law by claiming that these judgeships are not County positions, but instead are State offices. This argument fails and is, in any event, legally irrelevant.

First, these positions are certainly County offices. The Electoral Code states that:

> The words "state office" or "state officer" include an office to be or an officer to be voted for, by the entire state, including United States Senator and Congressman at large. . . .
>
> The words "county office" or "county officer," include an office to be filled or an officer to be voted for, by the qualified electors of the entire county.

46 Ill.Rev.Stat. §7-4.

Judicial candidates are elected by the residents of Cook County and are, as a matter of law, County officers.

Second, the argument is, in any event, a red herring. Even if Cook County Circuit judges are state officers and required to file a petition with the State Board of Election, this fact would not release the Harold Washington Party

from its §10-2 obligations. The names of the candidates for judges, as offices to be filled in Cook County, must be included on a party petition that is filed with the County Clerk.

Whether County or State officers, the eighteen Cook County Circuit judges elected in the November 1990 election were elected by the voters of Chicago and Cook County. As such, a new party that sought to establish itself within the County was required by §10-2 to include candidates for those positions on its petition. Because the Pinchamite Harold Washington Party did not field judicial candidates, it did not meet its obligation under §10-2. Its petition, therefore, was fatally flawed.

THE COMPLETE SLATE RULE IS CONSTITUTIONAL

It is universally accepted that states have a legitimate and compelling interest in assuring the integrity of the democratic process. *Williams v. Rhodes*, 415 U.S. 767 (1974), *Jenness v. Fortson*, 403 U.S. 431 (1971). Like all other legislative enactments, laws concerning this issue are presumed to be constitutional.

Regulation of the election process is subject to constitutional scrutiny and invalidation *only* if it places a significant burden upon the constitutional rights of either the candidates or the voters who wish to have their interests represented and if there is no outweighing state interest in its imposition. *Williams v. Rhodes, supra; Bullock*

v. Carter, 405 U.S. 134 (1972). The Harold Washington Party has not shown unacceptable burden or that Illinois has no significant interest in requiring the "complete slate" rule.

A. THERE HAS BEEN NO SHOWING OF CONSTITUTIONAL BURDEN.

Those raising constitutional objections to any election restriction must make a particularized showing of the constitutional injuries inflicted upon them. *Storer v. Brown*, 415 U.S. 724 (1976).

As much as Mr. Pincham would like it to be otherwise, the proper focus of constitutional inquiry does not begin with the state's justification of the burden, but rather with the nature, quality, and onerousness of the burden placed upon the new parties. It is certainly not incumbent upon the objectors to defend the minuscule restriction of a complete slate unless and until petitioners show that the restriction has impacted ballot access or party formation.

Bullock v. Carter and its progeny all stand for the proposition that the level of constitutional scrutiny depends upon the degree of burden placed upon ballot access. Demonstration of burden in this case rests solely with the Board and with the Harold Washington Party.

In *Storer*, the Court found that a demonstrable support requirement – in the form of a signature requirement – could not be deemed unconstitutional unless and until the actual burden of the requirement was analyzed and

found to be constitutionally onerous. Because the record did not include the size of the pool from which the signatures could come, the extent of the burden was unclear. The Court remanded the case for a determination of the size of the potential signature pool of the actual burden.

Similarly, in *Mandel v. Bradley*, 432 U.S. 173 (1977), the Court remanded the case because the trial court did not "sift through" all of the evidence to determine the scope of the burden upon the objectors.

In addition, the Court has required the particularized showing to demonstrate a heavy burden on the formation of new parties. For example, in *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173 (1979), the Court struck down an Illinois law that required parties seeking to establish themselves in a political subdivision to obtain signatures amounting to 5% of the population. The effect of this regulation was that, in Cook County, the number of signatures necessary was greater than 25,000. Candidates running in the entire *state* were required to amass only 25,000 signatures.

In the first go-round of this litigation, *Norman v. Reed*, the Court declared unconstitutional any Illinois law, rule, policy, or practice that invalidated all candidates on a party ballot *just because* the party did not obtain the requisite (and constitutionally-permissible) number of nominating signatures. In *Socialist Workers Party* and *Norman*, the burden upon the party was clear.

In contrast, the requirement to field judicial candidates is not unnecessary nor unduly burdensome. The

requirement to include judicial officers on its petition does not require any Herculean effort by the new party. If the new party is a genuine one and is supported by a finite segment of the population, the task of finding similarly-minded attorneys to run for a judicial position is not an insurmountable one. (The Court may take judicial notice of the hundreds of attorneys throughout Illinois who unsuccessfully seek judicial office). Likewise, it is certainly not so difficult that it would discourage groups that are dedicated to establishing a bona fide political party from attempting to establish that party.

The Harold Washington Party was required by §10-2 to include on its petition eighteen judicial candidates. Eighteen attorneys is an infinitesimal percentage (less that .05%) of the Illinois Bar, whose membership exceeds 36,000. This requirement is no burden and certainly cannot be characterized as a burden on ballot access or party formation.

Accordingly, on the record presented by these petitioners, the Court cannot even examine the constitutional justification of the complete slate requirement. Mr. Pincham's adherents have failed to show that they have or will suffer any constitutional or other damage as a result of the complete slate rule as it applies to judicial candidates.

B. THE COMPLETE SLATE REQUIREMENT ADDRESSES A SUBSTANTIAL STATE INTEREST AND IS CONSTITUTIONAL.

In justifying an electoral regulation, a State is not required to show particularized proof of the harm that it

seeks to prevent. *Munro v. Socialist Workers*, 479 U.S. 189 (1986). The *Munro* Court explained that, to require a state to prove actual reasons would "invariably lead to endless court battles over the sufficiency of the 'evidence' marshaled by a State . . . " and " . . . would necessitate that a State's political system sustain some level of damage before that legislature could take corrective action." *Munro* at 195. *Munro* recognized that a State's legislature should address possible problems prospectively, rather than retrospectively. This allows states some amount of discretion in predicting possible problems and in legislating regulations that would avoid them. In addition, it releases the state from the burden of proving the actual and particularized harm that the regulation cures.

By engrafting §10-2's "complete slate" provision, the Illinois legislature simultaneously encourages legitimate ballot access and party formation and discourages splintered, fragmented, and fictitious parties. Illinois is particularly susceptible to the formation of such parties because of the exceedingly liberal provisions of its election law regarding new parties.

Illinois actively encourages new party formation. Illinois dictates that individuals seeking political office must secure 25,000 signatures to qualify to appear on the ballot. 46 Ill.Rev.Stat. §10-3. However, if like-minded individuals come together to form a political party, Illinois does not require that each member of the group gather 25,000 nominating signatures. Instead, the law allows *all* members of the party to qualify for ballot access with a *total* of 25,000. 46 Ill.Rev.Stat. §10-2.

For example, if it had actually qualified for ballot access in the November 1990 election and if it had submitted a legitimate complete slate, the Pincham Harold Washington Party would have needed only 25,000 – as opposed to over 400,000 if its candidates had run separately and independently – to run for a total of approximately forty-one offices. In this way, Illinois election law strongly favors the formation of new political parties.

An inherent dilemma of Illinois' liberal election laws is that it is fraught with the possibility that a group of people with individual agendas – be they personal, political, economic, racial, or whatever – may join together to take advantage of the diminished signature requirement in order to get on the ballot, without being united to form a genuine party. Illinois has a right to protect its electoral system from that abuse. That is the substantial state interest that justifies the complete slate rule. In *Storer*, the United States Supreme Court specifically acknowledged "the substantial state interest in encouraging . . . political stability . . . " and " . . . in attempting to ensure that the election winner will represent a majority of the community. . . . " *Storer*, at 729.

Illinois has encouraged political stability and insured majority rule by placing one – *and only one* – obstacle to new party formation. Groups of like-minded people wishing to take advantage of Illinois' liberal party formation rules must pay one and only one price: *they must submit a complete slate of candidates for all positions at issue.*

By engrafting the "complete slate rule" in §10-2, the Illinois legislature took one step in avoiding the evils of political instability and minority government. If, for

example, a group of individuals wanted to take advantage of the decreased signature requirement, but did not really share a common political or social philosophy, this would be more apparent to the public as the number of candidates – and, hence, the number of political philosophies and individual agenda – increased. In addition, it would be more difficult to involve a greater number of people in such a scheme. The more offices that must be fielded, the greater likelihood that the new party is a genuine one.

In short, by requiring that new parties slate candidates for all positions to be filled, §10-2 helps to ensure that people who claim to be members of a new political party are not really individual opportunists – or, like Mr. Pincham and his followers, disgruntled regulars from other established parties – taking advantage of the lessened demonstrable support requirement imposed on new political parties.

CONCLUSION

The issues before the Court are moot and do not otherwise merit further review.

If the Court determines to undertake the petition and to consider the case on its merits, the Illinois Supreme Court should be reversed. Although it correctly concluded that Illinois has a "complete slate" requirement, it incorrectly decided that judicial candidates are not part of the complete slate requirement and it failed to decide that the complete slate requirement is clearly constitutional.

The Court should deny the petition for writ of certiorari.

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